



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2012-0494: FRL -9778-7]

Approval and Promulgation of Implementation Plans; Oregon: Heat Smart Program and Enforcement Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve multiple revisions to Oregon's State Implementation Plan (SIP) submitted to the EPA by the Oregon Department of Environmental Quality (ODEQ) on October 5, 2011, June 8, 2012, and November 28, 2012. The October 5, 2011 submission contains revisions to the Heat Smart program and to the enforcement procedures and civil penalties in Oregon Administrative Rules (OAR) Chapter 340, Division 12 (OAR 340-12). The June 8, 2012 submission contains additional revisions to the Heat Smart program, along with minor revisions and clarifications to general air pollution definitions (OAR 340-200), rules for stationary source notification requirements (OAR 340-210), and requirements for fuel burning (OAR 340-228). The November 28, 2012 submission contains revisions to approve the inclusion of expedited enforcement offers and updated penalty classifications and criteria (OAR 340-012).

DATES: Comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No.EPA-R10-OAR-2012-0494, by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. Mail: Justin A. Spenillo, EPA, Office of Air, Waste, and Toxics, AWT-107, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101
- C. Email: R10-Public_Comments@epa.gov
- D. Hand Delivery: EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Justin A. Spenillo, Office of Air Waste, and Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2012-0494. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information that is restricted by statute from disclosure. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov website is an “anonymous access” system, which means the EPA will not know your identity or

contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information that is restricted by statute from disclosure. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Justin A. Spenillo, (206) 553-6125; or by email at spenillo.justin@epa.gov body.steve@epa.gov

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I. This Action

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for states to submit SIPs to attain and maintain the National Ambient Air Quality Standards (NAAQS) and the EPA's actions regarding approval of those SIPs. In this action, we are proposing to approve and incorporate by reference (IBR) revisions to the portions of Oregon's SIP relating to the Heat Smart Program found at OAR 340-262 and submitted by ODEQ on October 5, 2011 and June 8, 2012.

The EPA is also proposing to approve but not IBR revisions to enforcement provisions in OAR 340-012, submitted by ODEQ on October 5, 2011 and November 28, 2012. In addition, the EPA proposes to approve the remaining revisions to OAR 340-012 only to the extent they relate to enforcement of requirements contained in the Oregon SIP.

The EPA proposes to approve revisions to OAR 340-200 (except OAR 340-200-0040), OAR 340-210 and OAR 340-228, as they relate to general definitions, stationary source notification requirements, and fuel requirements in the Oregon SIP. These revisions were submitted by ODEQ on June 8, 2012.

Each of the above-described submittals (October 5, 2011, June 8, 2012, and November 28, 2012) contains an amendment to OAR 340-200-0040, which describes the State's procedures for adopting its Clean Air Act Implementation Plan and references all of the state air regulations that have been adopted by the Environmental Quality Commission (EQC) for approval into the SIP (as a matter of state law), whether or not they have been submitted or approved by the EPA. We are proposing no action on the revisions to OAR 340-200-0040 in each of these submittals because it is unnecessary to take action on a provision addressing the State's SIP adoption procedures and because the Federally-approved SIP consists only of regulations and other requirements that have been submitted by ODEQ and approved by the EPA.

II. Why Are We Proposing To Approve These Revisions?

We are proposing to approve the SIP revisions submitted by ODEQ on October 5, 2011, June 8, 2012, and November 28, 2012 (except for OAR 340-200-0040) because

they serve to clarify and strengthen the State's existing SIP and are consistent with the CAA requirements. A more detailed explanation of the basis for our approval is provided below and in the materials included in the docket.

A. The EPA's Review of OAR Chapter 340, Division 262 Heat Smart Program for Residential Woodstoves and Other Solid Fuel Heating Devices (October 5, 2011 and June 8, 2012 Submittals)

OAR 340-262 was last approved by the EPA on January 22, 2003 (68 FR 2891). The Federally-approved woodheating rules previously codified at OAR 340-262 have been reorganized and strengthened within the same division and renamed as the Heat Smart Program for Residential Woodstoves and Other Solid Fuel Heating Devices. The Heat Smart program requires the removal of uncertified woodstoves and most other uncertified solid fuel heating devices upon the sale of a home. The revisions included in ODEQ's October 5, 2011 and June 8, 2012 submittals provide for: establishing the Heat Smart program as a statewide program as opposed to being a contingency measure only applicable to non-attainment areas in Oregon, streamlining and reorganizing the existing woodheating rules, and additions to the rules that strengthen the division and contribute to maintenance of the NAAQS. Table 1 below outlines the reorganization of OAR 340-262.

Table 1 – Reorganization of OAR 340-262

Rule name	Prior Rule	New Rule
Purpose	-0010	-0400
Definitions	-0020	-0450
Woodstove Sales - Requirements for Sale of Woodstoves	-0030	-0600
Exemptions	-0040	-0600, -0700, -0800
Civil Penalties	-0050	-0800
Woodstove Certification Program – Applicability	-0100	-0500
Emissions Performance Standards and Certification	-0110	-0500
General Certification Procedures	-0120	-0500
Labeling Requirements	-0130	-0600
Woodburning Curtailment - Applicability	-0200	-0800(1)
Determination of Air Stagnation Conditions	-0210	-0800 (3)
Prohibition of Woodburning During Periods of Air Stagnation	-0220	-0800(4)
Public Information Program	-0230	-0800(5)
Enforcement	-0240	-0800(6-8)
Suspension and Department Program	-0250	-0800(9)
Woodstove Removal Contingency	-0300	-0700

Program - Applicability		
Removal and Destruction of Uncertified Stove Upon Sale of Home	-0310	-0700
Home Seller's Responsibility to Verify Stove Destruction	-0320	-0700
Home Seller's Responsibility to Disclose	-0330	-0700
Materials Prohibited from Burning	New	-0900

The expansion of the Heat Smart program to a statewide program makes it applicable to a larger geographic area and with broader criteria, and enhances protection of air quality by accelerating the replacement of uncertified woodstoves. This revision strengthens the SIP by increasing the applicability and scope of the Heat Smart program which will result in the removal of more uncertified woodstoves and other uncertified solid fuel heating devices, and is therefore more protective of the NAAQS.

In addition to the reorganization of OAR 340-262 and the expansion of the Heat Smart program statewide, Oregon submitted for approval a number of additions, clarifications, and streamlining revisions. Oregon requests approval to add prohibitions limiting the types of materials that can be burned in a solid fuel device. The inclusion of such limitations strengthens the SIP by reducing the potential emission of criteria pollutants from the burning of inappropriate material. Oregon also proposes to expand the applicability of the rules from woodstoves/woodheaters to include solid fuel burning devices. The October 5, 2011 submittal requests approval to include a new definition for solid fuel burning devices that includes woodstoves and other devices that burn wood,

coal, or other nongaseous or nonliquid fuels. The June 8, 2012 submittal refines the definition to maintain the residential focus of the rule by not including small scale heating devices used for commercial, industrial, and institutional facilities. The new definition of solid fuel burning devices is more stringent because it covers residential heating devices that use wood, coal, or other non-gaseous or non-liquid fuels in addition to the residential woodheating devices covered under the prior definition.

Based on the EPA's review and analysis of OAR 340-262, the EPA is proposing to approve the above-described SIP strengthening revisions as meeting the requirements of section 110 of the CAA. In addition, the EPA proposes to remove from the SIP the regulations previously codified at OAR 340-262-0010 to OAR 340-262-0330 because the citations for these regulations have been renumbered as shown in Table 1.

B. The EPA's Review of OAR Chapter 340, Division 12 Rules (October 5, 2011 and November 28, 2012 Submittals)

The October 5, 2011 submittal included revisions to OAR 340-012-0054 and 340-012-0140. These revisions strengthen enforcement by including as Class I and II violations the restrictions on burning certain materials in solid fuel devices contained in OAR 340-262-0900, and by updating the related penalty matrix. Oregon is also requesting one revision to remove as a Class III violation the failure to display a certified woodstove temporary label. The removal of this violation as a Class III violation will not interfere with attainment and maintenance of the NAAQS.

The November 28, 2012 submittal includes one substantive revision and minor typographical and renumbering revisions. The substantive revision was the addition of

expedited enforcement offers and associated criteria at OAR 340-012-0030, 340-012-0038, and 340-012-0170. An expedited enforcement offer is a written offer from ODEQ to settle alleged violations using expedited procedures. The purpose of expedited enforcement offers is to promote compliance and enforcement through faster, informal resolution of alleged violations. The minor typographical and renumbering revisions address OAR 340-012-0155.

The EPA has reviewed the revisions described above and finds that they provide ODEQ with adequate authority for enforcing the SIP as required by Section 110 of the CAA and 40 CFR 51.230(b). The EPA is therefore proposing to approve the revisions to OAR 340-012 subject to the qualifications and in the manner discussed below.

The EPA's authority to approve SIP revisions extends to provisions related to attainment and maintenance of the NAAQS and carrying out other specific requirements of Section 110 of the CAA. In addition, EPA is approving the remaining sections in OAR 340-012 only to the extent they relate to enforcement of requirements contained in the Oregon SIP.

Although the EPA is approving the regulations in OAR 340-012 in the manner discussed above, the EPA is not incorporating these rules by reference into the Code of Federal Regulations because the EPA relies on its own independent enforcement procedures and penalty provisions in bringing enforcement actions and assessing penalties under the CAA.

The EPA also notes that Oregon Revised Statute (ORS) 468.126 prohibits ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days advanced written notice of the violation and has not

come into compliance or submitted a compliance schedule within that five-day period. By its terms, this statutory provision does not apply to Oregon's Title V program or to any program if application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude the EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

C. The EPA's Review of OAR Chapter 340, Divisions 200, 210, and 228 Rules (June 8, 2012 Submittal)

The June 8, 2012 submission includes revisions to OAR 340, Divisions 200, 210, and 228, which were last subject to the EPA approval on January 22, 2003 (68 FR 2891). OAR 340-200 includes the rules for General Air Pollution Procedures and Definitions, OAR 340-210 includes the rules for Stationary Source Notification Requirements, and OAR 340-228 includes the rules for Requirements for Fuel Burning Equipment and Fuel Sulfur.

Revisions to OAR 340-200-0020, General Air Quality Definitions, include minor typographical corrections, inclusion of a definition of "form," and subsequent renumbering.

Revisions to OAR 340-210, Stationary Source Notification Requirements, include changes to OAR 340-210-0100, 340-210-0110, 340-210-0120, and 340-210-0250. The revisions to OAR 340-210-0100 expand upon and clarify the applicable sources, personnel, and criteria necessary for a source to register with ODEQ in lieu of obtaining a permit. The revision to OAR 340-210-0100 also includes updated fee information and

clarifies the registration requirements applicable to sources subject to a federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs). Revisions to OAR 340-210-0110 and 340-210-0120 expand and clarify the registration criteria and requirements to maintain registration. Revisions to OAR 340-210-0250, Approval to Operate, clarify that compliance with existing standards, testing and monitoring requirements, and registration are still required and applicable. These revisions are more detailed and stringent than the previously approved provisions and are improvements to the rule.

Revisions to OAR 340-228, Requirements for Fuel Burning Equipment and Fuel Sulfur Content, include changes to OAR 340-228-0020, 340-228-0200, and 340-228-0210. These revisions include a cross reference to the revised OAR 340-262 and clarify source applicability dates.

Based on the EPA's review and analysis of the revisions to OAR 340-200, 340-210, and 340-228, the EPA is proposing to approve the revisions because they meet the requirements of section 110 of the CAA and will not interfere with attainment or maintenance of the NAAQS.

D. The EPA's Review of OAR 340-200-0040 (October 5, 2011, June 8, 2012, and November 28, 2012 Submittals)

On October 5, 2011, June 8, 2012, and November 28, 2012, Oregon submitted for SIP approval amendments to OAR 340-200-0040. The EPA is proposing no action on these amendments because it is unnecessary to take action on provisions addressing the

State's SIP adoption procedures and incorporating by reference all of the revisions adopted by the State for approval into the SIP (as a matter of state law).

III. Summary of Action

The EPA is proposing to approve amendments to OAR Chapter 340, Divisions 12, 200, 210, 228 and 262 because they are consistent with CAA requirements. We are also proposing to take no action to approve amendments to OAR 340-200-0040 submitted on October 5, 2011, June 8, 2012, and November 28, 2012.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and it will not impose substantial direct costs on tribal governments or preempt tribal law

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

Dated: January 31, 2013

Dennis J. McLerran
Regional Administrator
Region 10

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